

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Case No. 0:17-cr-00064-DWF-KMM

Plaintiff,

v.

ORDER

Edward S. Adams,

Defendant.

On September 3, 2019, Mr. Adams filed a motion to dismiss tax charges. [ECF No. 241.] In its response, the government asserts that he “has indicated an intent to rely on an advice-of-counsel defense at trial.” [Gov’t Resp. at 21, ECF No. 243.] The government takes the position that “[i]f Mr. Adams is going to rely on an advice-of-counsel defense at trial, he is going to have to make full disclosures to the government regarding the information he provided to his lawyers and accountants and the advice they provided based on that information.” [Id.] The government seeks to avoid a disclosure of significant information at trial that could delay the proceedings, and asks the Court to “impose a reasonable deadline on Mr. Adams, if he intends to rely on an advice-of-counsel defense, to disclose these communications to the government.” [Id. at 21–22.]

The Court agrees that a genuine invocation of an advice-of-counsel defense should be disclosed sufficiently prior to trial to allow the government enough time to review any communications that may be rendered discoverable by invocation of the defense. *See United States v. Workman*, 138 F.3d 1261, 1263–64 (8th Cir. 1998) (raising attorney advice as a defense may implicitly waive the attorney-client privilege and concluding that the defendant could not “claim in his defense that he relied on [his lawyer’s] advice without permitting the prosecution to explore the substance of that advice”). Therefore, if Mr. Adams intends to raise an advice of counsel defense, **he must notify the government by October 10, 2019.**

Date: October 3, 2019

s/Katherine Menendez

Katherine Menendez

United States Magistrate Judge